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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.59 OF 2007

The Greater Bombay Co-operative Bank Limited ... Applicant

versus

Bharat Champaklal Lalwani and another ... Respondents

Mr.N.V.Walawalkar, Sr.Advocate with V.R.Walawalkar i/by S.R.Bhalekar for petitioner.

Mr.Abhay Abhyankar, Sr.Advocate i/by Vigil Juris for respondents.

CORAM : A.S.OKA, J.

DATE : 02nd April 2007

PC :

1. Heard learned Senior Counsel appearing for the parties. By this revision application under section 115 of the Code of Civil Procedure, 1908, the petitioner bank has challenged a decree for eviction passed by the learned Judge of the Small Causes Court at Mumbai and confirmed by the Appeal Bench of the same Court. The petitioner was inducted as a tenant in respect of shop nos.1 and 2 and flat no.2 in the building known as

"Vijay Niwas", Plot No.193, Station Road, Wadala, Mumbai-31. It appears that nominally two separate tenancies were created. One was in respect of shop nos.1 and 2 and the other was in respect of flat no.2. A notice of termination of tenancy under section 106 of the Transfer of Property Act, 1882 was served by the respondents-landlord to the petitioner. The notice proceeds on the footing that the petitioner will not be entitled to protection of the Maharashtra Rent Control Act, 1999 in view of the provisions of Section 3(1)(b) of the said Act of 1999 as the petitioner is a bank. The suit was decreed by the Trial Court and the decree has been confirmed in an appeal.

2. The learned Senior Counsel appearing for the petitioner submitted that the suit filed by the respondent in the Court of Small Causes was not maintainable in view of Section 91 of the Maharashtra Co-operative Societies Act, 1960. He submitted that there were two separate tenancies created. One was in respect of shop nos.1 and 2 and other was in respect of flat no.2 and in fact separate rent receipts were issued. He, therefore, submitted that the respondent-plaintiff could not have filed only one suit for

eviction and there ought to have been separate suits as tenancies were separate and distinct. He placed reliance on a decision of a learned Single Judge of this Court in the case of Ganesh Trimbak Sardeshmukh & others Vs. Bandu Ambadas Lonkar & others reported in 2004(1)-ALL MR-549.

3. I have considered the submissions made by the learned Senior Counsel appearing for the petitioners. The Courts below have considered the provisions of Section 91 of the said Act of 1960 and have held that considering the business of the petitioner society of carrying on banking operations, it cannot be said that the provisions of Section 91 of the said Act of 1960 will apply. The Courts below, in my view, have rightly held that the dispute involved in the suit filed by the respondents as regards termination of tenancy does not touch the business of the society. Hence, the condition for applicability of Section 91 is not satisfied.

4. So far as second contention is concerned, it must be noted here that only one notice was issued by the respondent-landlord terminating the tenancy in respect of shop nos.1 and 2 and flat no.2. It is obvious that the joinder of said two

causes of action is permissible in one suit. Reliance was placed on a decision of a learned Single Judge of this Court in case of Ganesh Trimbak Sardeshmukh & others Vs. Bandu Ambadas Lonkar & others (supra). This was a case where one suit was filed by the landlord against two different tenants in respect of distinct portions of a property. The learned Single Judge held that the suit was not maintainable as Rule 9 of Order I of Code of Civil Procedure, 1908 was not applicable. It must be borne in mind that the learned Single Judge was dealing with a case where the suit was relating to two distinct premises which were let out to two different tenants. That is the reason why the learned Single Judge held that Rule 3 of Order I will not apply to the case before him. In the present case, the tenant in respect of both the premises is the same and obviously considering clauses (a) and (b) of Rule 3 of Order I of said Code of 1908, it cannot be said that the suit was not maintainable in law. In my view, there is no merit in the said contention raised by the learned Senior Counsel for the appellant.

5. There is no ground to interfere with the concurrent decrees passed by the Courts below.

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As stated earlier, the petitioner is not entitled to protection of the Maharashtra Rent Control Act, 1999 and this is a case where a notice of termination of tenancy under section 106 of the said Act of 1882 has admittedly been issued to the petitioner.

6. There is no merit in this revision application and the same is rejected.

7. The learned Senior Counsel appearing for the petitioner submits that the decree for possession may not be allowed to be executed for a reasonable time as the petitioner desires to approach the higher Court. The said prayer is opposed by the learned Senior Counsel for the respondent.

8. Considering the facts and circumstances, the decree for possession shall not be executed till 15th August 2007 subject to condition that the petitioner will not create third party interests and will not part with possession of the suit premises. The petitioner will also keep on paying the compensation equivalent to monthly rent. If the petitioner is in arrears, the same shall be cleared by the petitioner within a

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period of six weeks from today.

(A.S.OKA, J.)